

# FIFTH COURT OF APPEALS

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**No. 05-19-01236-CR**

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*Amber Renee Guyger, Appellant,* LISA MATZ  
Clerk

*v.*

*State of Texas, Appellee*

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On Appeal from the 204th Dist. Ct. Dallas Co.  
No. F18-00737

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## Guyger's Reply Brief

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## To the Honorable Justices of the Court of Appeals:

Appellant Amber Renee Guyger submits this Reply Brief:

### III. Argument

**Reply to the State’s Response to Issue 1: The evidence was legally insufficient to prove beyond reasonable doubt that Guyger committed Murder because: (1) through mistake, Guyger formed a reasonable belief about a matter of fact—that she entered her apartment and there was an intruder inside—and (2) her mistaken belief negated the culpability for Murder because although she intentionally and knowingly caused Jean’s death, she had the right to act in deadly force in self-defense since her belief that deadly force was immediately necessary was reasonable under the circumstances.**

#### Introduction

This case is about mistake of fact under [Tex. Penal Code § 8.02 \(2018\)](#) and its relationship with whether Guyger’s belief that her use of deadly force was reasonable and immediately necessary. If Guyger’s belief was reasonable, **actual danger** was **not** required, and Guyer was entitled to use force to protect against an **apparent danger**. [Jones v. State, 544 S.W.2d 139, 142 \(Tex.Crim.App. 1976\)](#). And if under a mistake of fact, Guyger reasonably believed that she entered **her** apartment and there was an intruder inside about to use force against her, it is irrelevant whether the person she believed was an intruder who was

about to use force was doing so unlawfully or whether it was even real.

[Dyson v. State, 672 S.W.2d 460, 462-463 \(Tex.Crim.App. 1984\).](#)

Thus, the issue is whether Guyger's mistake of fact was reasonable and whether she acted reasonably. Therefore, the **48 distinct factual points** that Guyger asserted in the Appellant's Brief on pages 82-99 proving that what occurred was a clear mistake of fact and Guyger acted reasonably under the circumstances are central to the case and not "...therefore beside the point" as the State claims. (State's Br. 76).

**Guyger's mistake-of-fact was reasonable, so her use deadly force was also reasonable and immediately necessary**

The State argues that mistake-of-fact under [Tex. Penal Code § 8.02](#) is not an element of any justification under Chapter 9, but the reasonableness of a belief about the nature of the threat presented can be based on a false assumption so long as derived from "appearances as viewed from" the defendant's standpoint. (State's Br. 57, 61, 74). The crux of the State's case is likely stated on pages 65-66, 70-71, and 77. The State incorrectly argues that the issue was **not** whether Guyger acted reasonably, but only that the underlying belief in necessity. (State's Br. 77). It was Guyger's act, the State wants the Court to believe, that she

seeks to justify, **not** just her belief. This is **not** how [Tex. Penal Code § 8.02](#) and Chapter 9 of the Texas Penal Code interplay. Thus, the **48 distinct factual points** that Guyger asserted in the Appellant’s Brief on pages 82-99 are not “beside the point.”

The law allows someone on her own property—and particularly while in her “castle”—far more leeway to legally use deadly force as a means of protection. The vital issue here is how likely was it for Guyger to rationally perceive Jean’s status as an “intruder” in her apartment. The more likely it was, the more “reasonable” Guyger’s assumption nevertheless becomes. In other words, this is part of the thought-process that amounts to a “reasonable belief” held by an ordinary and prudent person in the same circumstances as Guyger under the same circumstances. [Tex. Penal Code § 1.07\(a\)\(42\) \(2018\)](#); [Werner v. State, 711 S.W.2d 639, 645 \(Tex.Crim.App. 1986\)](#) (discussion of the “reasonable person”). The jury was required to view the reasonableness of Guyger’s actions from **her** standpoint. [Ex parte Drinkert, 821 S.W.2d 953, 955 \(Tex.Crim.App. 1991\)](#).

There was **no** evidence that Guyger intended to **trespass** upon Jean’s property or privacy. Guyger’s only recognizable intent was to end

her long and arduous day by entering **her** apartment. But as she entered what she undeniably believed was apartment 1378 on the third floor—a belief founded on undisputed objective information—Guyger was surprised to encounter another person who she reasonably believed presented an immediate and lethal danger to her. Because her belief was reasonable, **actual danger** was **not** required, and Guyger was entitled to use deadly force to protect against the **apparent danger**. [Jones, 544 S.W.2d at 142.](#)

As stated in [People v. Russell, 51 Cal.Rptr.3d 263, 270-271 \(Cal.App.4th 2006\)](#), “At common law, an honest and reasonable belief in the existence of circumstances, which, if true, would make the act with which the person is charged an innocent act...is excluded from the class of persons who are capable of committing crimes.” This concept is based on the “...rather simple rule that an honest mistake of fact or law is a defense when it negates a required mental element of the crime...” LaFave and Scott, *Handbook on Criminal Law*, 357 (1972). The example given is the crime of receiving stolen property: “...if the defendant by a mistake of either fact or law did not know the goods were stolen, even though the circumstances would have led a prudent man to believe they

were stolen, he does **not** have the required mental state and thus may not be convicted of the crime.” (emphasis added).

The terrible circumstances in Guyger’s case led to Jean tragically losing his life, so the issue here **not** about receiving stolen property. But Guyger’s arguments regarding her mistake-of-fact negating the mens rea for Murder are similar to how LaFave and Scott describe for receiving stolen property, yet Guyger’s case goes a step further: unlike the LaFave and Scott hypothetical where the circumstances would have led a “prudent man” to believe the items were stolen, Guyger was reasonable in her mistaken belief of entering what she thought was her apartment in which she believed there was an intruder.

This principle was illustrated in the context of a Murder prosecution in [\*Granger v. State\*, 3 S.W.3d 36, 41 \(Tex.Crim.App. 1999\)](#), where the defendant was on trial for murder because he shot at a vehicle was entitled to an instruction for mistake-of-fact because he stated that he did **not** intend to kill the victim and did not know the victim was in a vehicle when he fired into it. The Texas Court of Criminal Appeals (“TCCA”) observed that even though Granger could **not** justify his shooting into a parked vehicle, he would still **not** be guilty of murdering

its occupant if he reasonably believed that the car was empty—had **no** occupants. The TCCA agreed that without knowledge of another’s presence in the car, Granger could **not** have intentionally or knowingly caused the death of the 71-year-old disabled war veteran. Granger could **not** have harbored the degree of culpability required to find him guilty of Murder.

As the TCCA explained, when an accused creates an issue of mistaken belief as to the culpable mental element of the offense, he is entitled to a defensive instruction of mistake-of-fact. [\*Id.\* at 41, citing \*Miller v. State\*, 815 S.W.2d 582, 585 \(Tex.Crim.App. 1991\)](#). Thus, with Granger, the issue was whether his purported belief—if accepted as true—negated the culpability required for Murder under Tex. Penal Code 19.02(b), and the TCCA concluded that it does.

In the words of the Model Penal Code, Guyger described—and the evidence exclusively supported—her lack of “the purpose, knowledge, belief, recklessness or negligence required to establish a material element of the [charged] offense.” [\*Model Penal Code § 2.04\(1\)\(a\) \(2020\)\*](#). As the explanatory note provides, this states the general principle governing whether and when ignorance or mistake of fact allows a

defense. The matter is “a function of the culpability otherwise required for commission of the offense.” A mistake-of-fact is “a defense to the extent that it negatives a required level of culpability or establishes a state of mind that the law provides is a defense.” *Id.*

Thus, the State failed to prove what was required of it to hold Guyger responsible under the Murder statute because if a person is ignorant or mistaken as to a matter-of-fact, under the appropriate circumstances she lacks the requisite culpability with respect to the fact as it actually exists. *See* Wayne R. Lafave, *Substantive Criminal Law*, §5.6(b) (3d ed. 2017). Here, a rational juror would necessarily be left with reasonable doubt about whether the State proved the mens rea required, and the jury thus should have found that Guyger did **not** engage in conduct that was constitutive of the subjective elements of Murder.

There was **no** evidence of an **intentional ignorance** by Guyger as to where she was or who she was confronting. And due to an unfortunate coincidence of circumstances that undersigned counsel details in the Appellant’s Brief—complete with exhibits from the trial—Guyger had **no** opportunity to evaluate the risk that she entered the wrong door.

Under [Tex. Penal Code § 8.02](#), a mistake of fact is “a defense to prosecution that the actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the **kind of culpability** required for commission of the offense.” (emphasis added). The term “kind of culpability” means “culpable mental state.” [Posey v. State, 966 S.W.2d 57, 70 \(Tex.Crim.App. 1998\)](#). The defense arises when there is evidence that a defendant’s mistaken reasonable belief about a matter of fact negated the element of the culpable mental state required for the offense. *Id.* The mistake-of-fact doctrine here **must** be considered together with the reasonable use of deadly force in self-defense.

Finally, mistake-of-fact is **not** a defense upon which Guyger bears some burden of proof as though it is an affirmative defense. *See, e.g., Tex. Penal Code § 2.04 (2019)*. The State seems to imply that Guyger had some burden of proof because she failed to present evidence supporting it. (State’s Br. 42-43, 56); *see Saxton v. State, 804 S.W.2d 910, 913-914 (Tex.Crim.App. 1991)* (defensive claims upon which the State bears the burden of persuasion is different than affirmative defenses upon which the defendant bears the burden of proof).

Obviously Guyger presented evidence supporting the defense. She testified that she was mistaken in her beliefs. There are also the **48 distinct factual points** that Guyger asserted in the Appellant’s Brief on pages 82-99 that the State ignores as being “beside the point.” Yet the State never asserted at trial that Guyger **knew** she entered Jean’s apartment or an apartment that was **not** hers and opened fire. Now, by arguing that there was “no evidence that (Guyger” held a mistaken belief that negated her intent to kill Jean...,” the State appears to argue that that Guyger may have known she entered the wrong apartment.

Guyger was mistaken in fact when she thought she was entering her apartment. The issue is whether her belief—although mistaken—was reasonable, and it was. Guyger’s mistake-of-fact must be considered along with—and not separate from as the State suggests—her belief that her use of deadly force was immediately necessary. As explained above and in detail in the Appellant’s Brief, the evidence showed that Guyger’s belief must be presumed reasonable under [Tex. Penal Code § 9.32\(b\)](#), [Braughton v. State, 569 S.W.3d 592, 606-607 \(Tex.Crim.App. 2018\)](#), and [Tex. Penal Code § 9.32\(a\)\(2\)](#).

Thus, under [Saxton, 804 S.W.2d at 913-914](#), Guyger met her burden of producing evidence supporting self-defense, and the State failed in its burden of persuasion to disprove it and prove beyond a reasonable doubt that Guyger committed Murder under [Tex. Penal Code § 19.02\(b\)\(2\)](#). The totality of the evidence supports this conclusion. Guyger asks this Court to reverse the Judgment and sentence and enter a judgment of acquittal. [Tex. Code Crim. Proc. Art. 44.25](#); [Tex. Rule App. Proc. 43.2\(c\)](#).

## **Reply to the State’s “Cross-Issue” on Jury Charge Error**

The State asks this Court to sustain a “cross-issue” on whether the trial court erred in giving a mistake-of-fact instruction. (State’s Br. 37-46). Guyger raised only two issues, both arguing legal sufficiency. The mistake-of-fact instruction under [Tex. Penal Code § 8.02](#) is inextricably intertwined with the legal sufficiency issues. Whether there was a reasonable mistake-of-fact by Guyger will be resolved in the legal sufficiency analysis.

This is **not** a real “cross-issue,” but merely a request for an advisory opinion or a request for a directive regarding language used or the reasoning of the trial court that does **not** impact the ultimate decision. As this Court explained in [Seghelmeble v. State, 390 S.W.3d 576, 583 \(Tex.App.-Dallas 2012\)](#), “...(w)e cannot address a cross-issue in which the State merely requests a directive as to language or reasoning of the lower court that does not impact the ultimate decision,” *citing Pfeiffer v. State, 363 S.W.3d 594, 601, fn.32 (Tex.Crim.App. 2012)*. In [Seghelmeble](#), the State asked this Court to do the same as the State asks this Court in this case—to review an alleged jury-charge error. *Id.* at 582. The State asked this Court to review the trial court’s rulings overruling the State’s

objections to a jury-charge instruction even if this Court affirmed the judgment, apparently to provide guidance and prevent errors in future cases. *Id.* This Court declined to do so.

Likewise, here the issue of the mistake-of-fact instruction is part of the legal sufficiency analysis and not a separate “cross-issue” for which this Court may grant “relief.” This issue will be dealt with when this Court decides whether the evidence was legally sufficient and whether the jury erred by finding against Guyger on her defensive issue under [Saxton, 804 S.W.2d at 913-914](#), [Zuliani v. State, 97 S.W.3d 589, 594 \(Tex.Crim.App. 2003\)](#), and [Krajcovic v. State, 393 S.W.3d 282, 286 \(Tex.Crim.App. 2013\)](#).

#### **IV. Conclusion**

Guyger prays that this Court reverse the Judgment and sentence and: (1) per Issue 1, acquit her of Murder; or (2) in the alternative, per Issue 2, acquit her of Murder, convict her of Criminally Negligent Homicide, and remand for a new trial on punishment.

Respectfully submitted,

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